

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Proposed Policies and Programs  
Governing Low-Income Assistance Programs.

Rulemaking 01-08-027  
(Filed August 23, 2001)

**O P I N I O N**

This decision awards Latino Issues Forum/The Greenlining Institute (LIF/GL) \$37,972.43 in compensation for its contribution to Decision (D.) 02-07-033.

**1. Background**

D.02-07-033 is an interim decision addressing the status of the rapid deployment of low-income assistance programs, initially adopted in D.01-05-033, for both small and large energy utilities. In D.02-07-033 the Commission examined the manner in which achievements in the California Alternate Rates for Energy (CARE) program are measured, and directed utilities to achieve minimum benchmarks for penetration<sup>1</sup> rates for 2002. These benchmarks, representing improvements over penetration rates achieved in 2001, vary for utilities due to differences in demographics and the magnitudes of eligible

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<sup>1</sup> Penetration rates for the CARE program are defined as the number of low-income customers that actually participate divided by an estimate of the number of customers eligible for the program.

low-income customers. In addition, larger utilities<sup>2</sup> were directed to utilize tabulations of 2000 census data to update demographic information to better estimate the number of eligible CARE customers. The Commission stated its goal is to reach 100% of low-income customers who are eligible for, and desire to participate in, the CARE program. To assist in this goal, D.02-07-033 adopted an automatic enrollment program for customers of PG&E, Edison, SoCalGas and SDG&E who enroll in certain other government programs.

Programs adopted in D.02-07-033 represent improvements to the rapid deployment strategy initially adopted in D.01-05-033, (Application (A.) 00-11-009)<sup>3</sup> providing rate assistance under CARE and the Low-Income Energy Efficiency (LIEE) program, in response to the energy crisis. D.01-05-033 authorized expanded use of LIEE funds to leverage programs, a “capitation fee” of \$12 per customer for enrolling CARE customers, new LIEE measures, and increased non-English advertising. D.02-07-033 found that the deployment strategy adopted in D.01-05-033 was successful, but that modifications were necessary to achieve the Commission’s goals for low-income customers. These modifications included use of 2000 census data, an automatic enrollment program, reporting requirements, and the tracking of customers who are not in the CARE program.

D.02-07-033 also addressed SBX1 2 that modifies Pub. Util. Code Sec. 739.1 to require that the Commission take certain steps to improve CARE enrollment

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<sup>2</sup> Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), Southern California Gas Company (SoCalGas), and San Diego Gas and Electric Company (SDG&E).

<sup>3</sup> A.00-11-009 was closed August 23, 2001. All rapid deployment issues in A.00-11-009 were transferred to R.01-08-027.

and participation, including comparing customers in CARE with customers enrolled in the Universal Lifeline Telephone System (ULTS) program as a means to increase enrollment in the CARE program. Workshops were held to address improving penetration rates by using ULTS information. Since the record indicated that not all ULTS customers were eligible for ULTS, the Commission deferred consideration of automatic enrollment for CARE using ULTS customer information until further determination of enrollment verification procedures.

On September 16, 2002, LIF/GL filed its request for compensation for its substantial contribution to D.02-07-033. In response to questions from the assigned Administrative Law Judge, LIF/GL filed an amendment and errata to its request on October 21, 2002. The amendment and errata provide additional information on LIF/GL's request, and increased the request from \$38,239.15 to \$39,684.40, due to inclusion of hours for Robert Gnaizda, and slight revisions to the time of other staff.

On October 17, PG&E filed a response to LIF/GL's compensation request (PG&E Response). PG&E contends that LIF/GL's showing of significant financial hardship appears "sketchy," and that the Commission may wish to evaluate the hourly rates of LIF/GL's attorney Brown in light of other compensation decisions. LIF/GL responded to PG&E asserting that Edison has not disputed LIF/GL's requested hourly rates, and that PG&E pays attorneys, including outside attorneys, at much greater hourly rates than the rates requested by LIF/GL. LIF/GL also requests that the Commission order PG&E to disclose all attorney rates, and indicates that as an alternative, LIF/GL will file a motion to achieve this purpose. LIF/GL adds that a 25% multiplier should be included in its compensation request to offset the uncertainty of payment to LIF/GL as a result of PG&E's bankruptcy.

## 2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 1801-1812. (Unless otherwise noted, all statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's<sup>4</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. LIF/GL timely filed its request for an award of compensation on September 16, 2002, and an amendment and errata on October 21, 2002. Under §1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.”

Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the Commission, the customer’s presentation has substantially assisted the Commission in the making of its order or decision because the order or decision

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<sup>4</sup> To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with §1806.

### **3. NOI to Claim Compensation**

LIF/GL timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated March 29, 2002.

### **4. Substantial Contribution to Resolution of Issues**

A party may make a substantial contribution to a decision in one of several ways.<sup>5</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision,<sup>6</sup> or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>7</sup> A substantial

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<sup>5</sup> Section 1802(h).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

LIF/GL states that it was an advocate of rapid deployment of the CARE and LIEE programs reported in D.02-07-033, and that its negotiated memoranda of understanding (MOU) with Edison and PG&E contributed to this rapid deployment. LIF/GL contends it suggested strategies such as community based outreach programs, capitation fees and media campaigns for non-English speaking customers. LIF/GL argues that it supported a penetration goal of 100%, the monitoring of penetration rates, and coordination of low-income strategies with the ULTS program, and through the Low Income Oversight Board (LIOB). LIF/GL asserts it substantially contributed to an automatic enrollment process for the CARE program, and that although other parties advocated and supported both rapid deployment and automatic enrollment programs, LIF/GL provided a unique perspective in representing low-income customers.

In its amendment and errata LIF/GL explains that work done in A.00-11-009 is properly included in this request since A.00-11-009 was closed and issues moved to R.01-08-027. Furthermore, LIF/GL states it requested those hours spent at status conferences to monitor utility compliance with the MOUs between LIF/GL and PG&E and Edison. Finally, LIF/GL has also requested compensation for hours after D.02-07-033 was adopted, in order to respond to an emergency motion by a PG&E contractor and other parties regarding cessation of LIEE rapid deployment activities. In this regard, LIF/GL believes that efforts to uphold D.02-07-033 are also compensable.

#### 4.1 Assessment of Substantial Contribution

Under Section 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution does not require that we adopt a party's position in total.<sup>8</sup>

In assessing LIF/GL's substantial contribution to D.02-07-033 we look to the comments and reply comments filed by LIF/GL, the specific recommendations in those comments, our adoption, if any, of these recommendations, and whether other parties proposed the same or similar recommendations in this phase of the proceeding. We also evaluate the extent of duplication of effort by LIF/GL and other parties,<sup>9</sup> and the activities and participation by LIF/GL.

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<sup>8</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issue involved. *See also* D.89-09-103 (modifying D.89-03-063) where we hold that in certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinary complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.

<sup>9</sup> LIF/GL in its compensation request notes there is some limited duplication of efforts. (p. 8).

LIF/GL made four filings<sup>10</sup> that reflect its recommendations and proposals in this proceeding. The first is a set of comments for implementation of SB X1 2. These comments urge a plan of action for categorical enrollment and penetration goals, and suggest that the ULTS is a model for low-income energy programs. LIF/GL recommends that the Low Income Oversight Board (LIOB) act to bring about categorical enrollment, and that the Commission consider oral self-certification for CARE enrollment. The American Association of Retired Persons (AARP) provided similar recommendations in its comments, however it did not recommend that the LIOB oversee categorical enrollment. Although D.02-07-033 did not adopt the LIOB as an oversight agent, nor did it adopt the ULTS model or oral self-certification, it provided for coordination with the ULTS program and directed the LIOB to hold meetings on target outreach to telephone service areas.

In April 29 reply comments concerning CARE and ULTS penetration rates, LIF/GL opposed random verification of ULTS customers for eligibility and direct marketing by telecommunications carriers to ULTS customers. LIF/GL recommended use of means tested programs for verification and use of the LIOB and ULTS Marketing Board for enrollment and information purposes. D.02-07-033 adopted neither use of means tested programs or use of the LIOB or ULTS Marketing Board as these are telecommunications matters that should be considered in the appropriate telecommunications proceedings.

In May 13 reply comments on 2002 CARE program funding, LIF/GL recommended expeditious approval of CARE applications subject to review of

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<sup>10</sup> LIF/GL filed comments on January 3, 2002, and reply comments on April 29, 2002, May 13, 2002, and June 17, 2002.



overhead expenses, use of the LIOB to evaluate expenditures, and categorical or automatic enrollment.

In LIF/GL's June 17 reply comments on the draft decision,<sup>11</sup> LIF/GL agreed with the comments of other parties such as ORA and AARP who had concerns over automatic enrollment and recertification. LIF/GL questioned the value of bill inserts, and believed these were useless. However, D.02-07-033 adopted the use of bill inserts informing customers of the benefits of CARE.

In its compensation request, LIF/GL takes the position that it long supported, "perhaps alone," a CARE penetration goal of 100%. However comments of AARP, also supported a goal of 100% penetration,<sup>12</sup> as did Edison.<sup>13</sup> Similarly, LIF/GL's claim of substantial contribution to the monitoring of penetration rates, coordination of strategies with ULTS, and shaping of an automatic enrollment program, are duplicated by the positions of ORA and AARP.

Our overall assessment of the participation of LIF/GL is that while it contributed to D.02-07-033, its efforts were often not unique and duplicated contributions of other parties because they came in reply comments rather than opening comments. However, our review of the activities and the hours of LIF/GL staff, indicates that many of these hours were spent reviewing documents filed by other parties, and otherwise participating in the proceeding. For example, the timesheets for LIF's Attorney Brown indicate approximately 34 hours for reviewing filings of other parties. Given that these hours were

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<sup>11</sup> LIF/GL did not file opening comments on the draft decision.

<sup>12</sup> AARP Comments on Draft Decision of ALJ Gottstein, p. 2, filed June 10, 2002.

<sup>13</sup> Edison Comments on Draft Decision of ALJ Gottstein, p.4, filed June 10, 2002.

necessary to actively participate in the proceeding regardless of outcome, and that portions of LIF/GL's recommendations were adopted, we have determined that LIF/GL made a substantial contribution to D.02-07-033.

Although we find that LIF/GL did make a contribution to D.02-07-033, we are concerned when an intervenor does not provide unique proposals or perspectives for consideration by the Commission. We fully expect that in the future LIF/GL will provide productive proposals and recommendations through comments, as opposed to reply comments that merely duplicate or support the positions of other parties.

## 5. The Reasonableness of Requested Compensation

LIF/GL requests compensation in the amount of \$39,684.40 as follows:

### Attorney Fees

Susan Brown	80.25 hours @ \$325 per hour	=	\$26,081.25
	27 <sup>14</sup> hours @ \$275 per hour	=	\$7,425.00
Robert Gnaizda	4.4 hours @ \$325 per hour	=	1,430.00
Enrique Gallardo	6.05 hours @ \$255 per hour	=	1,542.75
	19.05 hours @ \$122 per hour	=	<u>2,324.10</u>
	Subtotal		\$38,803.10

### Other Costs

Photocopies	386.26
Postage	<u>495.04</u>
<b>Total</b>	<b>= \$39,684.40</b>

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<sup>14</sup> Corrected from 26.5 hours due to arithmetic error.

### 5.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We recognize that putting a dollar value on the benefits accruing to low-income ratepayers as the result of LIF/GL’s substantial contribution may be difficult. However, an assessment of whether the requested compensation is in proportion to the benefits achieved helps ensure that ratepayers receive value from compensated intervention, and that only reasonable costs are compensated. Neither LIF/GL’s initial request, nor the errata, discuss the productivity achieved as a result of LIF/GL’s participation in the instant proceeding. The absence of a discussion on productivity makes a determination of the reasonable cost of participation more difficult.

We can however conclude that the award of compensation to LIF/GL is reasonable after adjustments to hourly rates, and hourly amounts as noted below. LIF/GL’s participation played a role in our decision to set different penetration rates for the different utilities, assisting us in shaping an automatic enrollment program, and initiating use of the LIOB for coordinating customer outreach. Taken together, this participation will assist us in implementing

improved enrollment in the CARE program. As a conservative measure of this participation in improving the CARE program, a one-percent increase<sup>15</sup> in enrollment of qualifying households<sup>16</sup> equates to 10,000 new CARE customers. Using the Rapid Deployment Program Statistics in Table 1 of D.02-07-033, this represents about \$1.2 million in benefits to new CARE customers, an amount that significantly exceeds our adopted award to LIF/GL in this decision.

## **5.2 Hours Claimed**

In its original compensation request, later corrected in the errata, LIF/GL provided records of the time spent by its attorney and staff on a daily basis. The errata also added the time of LIF/GL advocate Gnaizda to the request. The records provide brief descriptions of the activities for each of the persons for whom LIF/GL requests compensation, with time recorded in hundredths of an hour. Requested fees are allocated to work in 2001 and 2002, and by issue.

As discussed in the amendment and errata, LIF/GL requests compensation for 4.25 hours incurred by attorney Brown after D.02-07-033 was adopted, in order to address a motion filed by a contractor and other filings related to D.02-07-033. LIF/GL also requests 7.25 hours incurred by Brown after D.02-07-033 was adopted for preparation for a prehearing conference (PHC) and other activities. We will include the 4.25 hours in our adopted award as these were hours incurred responding to a motion that addressed issues on the

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<sup>15</sup> D.02-07-033 (p. 5) adopted increases in penetration rates for 2002 from 5% for Edison to 13% for SDG&E.

<sup>16</sup> An estimated one million households qualify but do not participate in CARE (D.02-07-033, p.30).

continued funding of LIEE in D.02-07-033. However, the additional 7.25 hours incurred for a PHC and other activities after D.02-07-033 was adopted appear to be for work in another phase of this proceeding and therefore have been excluded in the adopted hours in this award.

### **5.3 Hourly Rates**

LIF/GL requests hourly rates of \$275 for 2001, and \$325 for its attorney Brown. In D.03-04-050 we adopted a rates of \$300 for 2001, and \$325 for 2002. We will adopt these rates for Brown's work in this request.

LIF/GL requests a rate of \$325 per hour for Gnaizda for 2002. In D.03-04-050 we adopted a rate of \$365 per hour for Gnaizda for 2002. We will adopt this rate for Gnaizda's work in this request.

LIF/GL requests a rate of \$255 for 2002 for Gallardo, and has attached a declaration providing information on his background and experience. In D.03-04-050 we adopted a rate of \$235 for Gallardo for 2002. We will adopt this rate for Gallardo's work in this request.

### **5.4 Other Costs**

LIF/GL requests \$386.26 for photocopies and \$495.04 for postage, with specific costs summarized by date. LIF/GL has not requested compensation for fax, phone or other charges. Our review of the submitted expenses in relation to the size of the service list (86), the number of documents, and LIF/GL's choice not to seek any reimbursement for other related costs, leads us to conclude that these other costs are reasonable.

## **6. Award**

We award LIF/GL \$37,972.43 calculated accordingly:

#### **Attorney Fees:**

Brown	27 hours x \$300 per hour (2001)	= \$8,100.00
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	73 x \$325 per hour (2002)	=	\$23,725.00
Gnaizda			
	4.40 hours x \$365 per hour (2002)	=	\$1,606.00
Gallardo			
	6.05 hours x \$235 per hour (2002)	=	\$1,421.75
	19.05 hours x \$117.50 per hour <sup>17</sup>	=	<u>\$2,238.38</u>
	<b>Subtotal:</b>	=	\$37,091.13

**Other Costs**

Photocopies	=	\$386.26
Postage	=	<u>\$95.04</u>
<b>Total:</b>	=	\$37,972.43

We will assess responsibility for payment among PG&E, Edison, SDG&E and SoCalGas according to their respective share of the California jurisdictional revenues filed with the Commission for each utility for 2001. These revenues include combining the gas and electric revenues for PG&E and SDG&E. We adopt this methodology to reflect the nature of the combined gas and electric issues in this proceeding. This methodology results in the following allocation of award payment responsibility:

PG&E	47.6%
SDG&E	8.7
Edison	29.4
<u>SoCalGas</u>	<u>14.3</u>

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<sup>17</sup> The adopted rate is reduced 50% for fee preparation purposes.

100.0%

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing January 4, 2003, (the 75th day after LIF/GL filed its errata to its compensation request) and continuing until each utility makes its full payment of award.

As in all intervenor compensation decisions, we put LIF/GL on notice that the Commission Staff may audit LIF/GL's records related to this award. Thus, LIF/GL must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. LIF/GL's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **7. Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and Meg Gottstein is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. LIF/GL has made a timely request for compensation for its contribution to D.02-07-033.

2. LIF/GL has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. LIF/GL contributed substantially to D.02-07-033.

4. Except as noted in the Opinion, LIF/GL has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

5. The hourly rate for Brown is based on a rate previously approved by the Commission.

6. The hourly rate for Gnaizda is based on a rate previously approved by the Commission.

7. The adopted hourly rate of \$235 per hour for Gallardo is based on a rate previously approved.

8. The other costs incurred by LIF/GL are reasonable.

### **Conclusions of Law**

1. LIF/GL has substantially fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation.

2. LIF/GL should be awarded \$37,972.43 for its contribution to D.02-07-033.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that LIF/GL may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Latino Issues Forum/The Greenlining Institute (LIF/GL) is awarded \$37,972.43 in compensation for its substantial contribution to Decision 02-07-033.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) shall pay LIF/GL based on their proportion of 2001 California Jurisdictional revenues. Payment shall be made within 30 days of the effective date of this order. PG&E, Edison, SDG&E and SoCalGas shall also pay interest on the award at the rate earned on prime, three-month



commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning January 4, 2003.

3. The comment period for today's decision is waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D0207033
<b>Proceeding(s):</b>	R0108027
<b>Author:</b>	ALJ Gottstein
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas and Electric, and Southern California Gas Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
Greenlining/Latino Issues Forum (G/LIF)	9/16/2002	\$39,684.40	\$37,972.43	Failure to justify hourly rate, increase in hourly rate, excessive hours.

**Witness Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Susan	Brown	Attorney	Latino Issues Forum/The Greenlining Institute	\$275	2001	\$300
Susan	Brown	Attorney	Latino Issues Forum/The Greenlining Institute	\$325	2002	\$325
Robert	Gnaizda	Attorney	Latino Issues Forum/The Greenlining Institute	\$325	2002	\$365
Enrique	Gallardo	Attorney	Latino Issues Forum/The Greenlining Institute	\$255	2002	\$235